

8. **Meet threshold requirements for protectiveness.** The Proposed Plan does not meet or is uncertain to meet multiple interim risk targets.
9. **Include language regarding Yakama’s role in overseeing the cleanup.** The Yakama Nation expects to be fully engaged and an active participant in oversight throughout the cleanup process.
10. **EPA must uphold its federal trust responsibility by clarifying roles in the ROD.** EPA cannot delegate its federal trust responsibility to the State of Oregon. We are opposed to a State-led implementation of the in-water cleanup at this site.

Alternative G, with some important modifications, is the type of cleanup that gets us closer to protections for our people, our culture, and a way of life we depend upon. Thank you for the meeting today. Yakama Nation will follow-up with a letter and official comments on EPA’s proposed plan.

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CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

Portland Harbor Superfund Site, Proposed Plan
Meeting with EPA Administrator Gina McCarthy

July 25, 2016

YAKAMA NATION AND THE COLUMBIA RIVER BASIN

In 1905, the United States Supreme Court issued its landmark decision in the case known as United States v. Winans (198 U.S. 371). Rendering an opinion for an 8-1 majority, Justice Joseph McNenna wrote that for the Yakama people fishing for salmon in the Columbia River was “*not much less necessary to the Indians than the atmosphere they breathed.*” This decision also went on to help establish one of the most important principles in Indian law, generally known as a the Reserved Rights Doctrine, when the court further stated that the rights retained by the Yakama Nation via their Treaty of 1855 “... *was not a grant of rights to the Indians but a grant of rights from them – a reservation of those not granted.*”

The Columbia River is vital to the Yakama people, to our way of life, to our culture.

Yakamas have fought to protect our rights, protect the Columbia River, and protect the salmon.

Today the river is polluted, the salmon are scarce, and our people are struggling.

What was true in 1905 – and for thousands of years before that – is still the case today and will be for Yakama children yet unborn; salmon are of paramount importance to the our people. Columbia River salmon are central to our diet and therefore our health, to our ability to earn a living, to our religion and to our culture. For these reasons, we have been fighting in the courts and before the Congress for well over 100 years to ensure the salmon runs of the Columbia River Basin are protected. While we have oftentimes prevailed before the courts or in the Congress, these victories have still left the fishery resource significantly reduced and our people damaged in ways that are not always evident. There are species of food that our elders used to eat, that came from the river or that were dependent on the river and that are now gone. As Indian people we are taught to plan seven generations ahead. Unless we take steps to deal with toxics in the Willamette and Columbia what will the future hold, even one two generations into the future, not to mention seven?

We are committed to a clean and protective Columbia River that sustains the cultural practices of our people and improves life for our neighbors and future generations. It is important that EPA support Yakama Nation’s commitment by selecting an aggressive cleanup for the lower Willamette River, the most industrialized tributary to the Columbia, so that fish are clean, healthy and safe to eat.

PORTLAND HARBOR SUPERFUND SITE | YAKAMA NATION INPUT ON THE PROPOSED PLAN

Yakama Nation is asking EPA to implement Alternative G with modifications. Alternative G is a more aggressive plan that gets us closer to a reasonable cleanup. In addition, we have key issues that need to be addressed in your Record of Decision (ROD).

- 1. Provide a cleanup that results in fish that are clean, healthy and safe to eat.** The cleanup should be aggressive enough to eliminate health advisories as a result of toxic releases from Portland Harbor. The Proposed Plan uses fish consumption advisories, instead of adequate cleanup, to protect human health. The restoration timeframe of 30 years is unsupported and it is unknown if these institutional controls can ever be lifted.
- 2. Prevent the release of contaminated sediments into the Columbia River.** EPA’s overreliance on natural recovery will allow for the continued release of persistent and bioaccumulative contaminants to the Columbia River, putting our fish and people at risk. In addition to using lower Alternative G dredge decision criteria, the ROD should provide more aggressive cleanup measures in erosional areas.
- 3. Include a contingency plan.** Proposed Plan projections for natural recovery of multiple contaminated media are unsupported and highly uncertain. A contingency plan with a clear decision criteria is necessary to correct the recovery trajectories if the site is not adequately trending towards the cleanup goals.
- 4. Protect shorelines and nearshore habitat.** A significant portion of the affected benthic receptors, as well as riverbank and groundwater source areas are unaddressed in the Proposed Plan and need clarification in the ROD.
 - The riverbank and groundwater cleanups should not be dealt with separately by the state, and should be addressed more specifically in the ROD.
 - A greater portion of the area exceeding benthic criteria should be cleaned up.
 - Higher value habitat areas should be given additional consideration for a more protective cleanup.
- 5. Include an evaluation of upland source control and provide assurances that upland sources will not affect the in-water cleanup efforts.** Adequate upland source control measures must be in place prior to the cleanup to protect the river from recontamination. EPA needs to take a more active role in ensuring these source controls move forward and are adequate.
- 6. Remove all Principal Threat Waste (PTW) to assure maximum reduction of risk for the life of the remedy. Eliminate the use of an on-site, in-water Confined Disposal Facility (CDF).** It will take 100s to 1,000s of years for contaminants to degrade. Capping PTW in place and disposing of waste on-site provides little to no assurance that future releases will not occur on this time scale, and in a river environment that is set in a tectonically active region as well as subject to climate change.
- 7. Comply with ARARs.** The cleanup must comply with State water quality and hazardous substance remedial action rules for risk.